CF0000060981

(25) GA 947/96 (2)

Division Bench (Criminal)

/- APPEAL OF PRISONER -/

No. 417 Name धोयामि लचकु

Father's Name धोगा Resident ग्राम पुरेला पारा पो०स्टे० थाना कोरेनार

Age 47 Sentenced to आजीवन कारावास on 8-4-96

Under Section 302 I.P.C. by श्री आर. के. पांडारकर सत्र-न्यायाधीश जशपुरनगर अपराध क्रमांक 402/92

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may be heard at all if legal practioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :- No.
2. Date of which copy received :- 8-4-96
3. Date on which appeal sent :- 22-4-96
4. Whether the prisoner wished to be represented or not. Yes/No

No. 417 Name धोयामि लचकु पिता धोगा

Confined in पिजरी Jail प्रथम श्रेणी जशपुरनगर

No. जे282/5162जे०1/96 Dated 22-4-96

Forwarded to the CHIEF JUDICIAL MAGISTRATE together with a copy of Judgement or order passed in the case for favour of transmission to the proper Appleate Court.

Superintendent-Central Distt/Sub-Jail.

Date of receipt in C.J.M's Office. 25.4.96

Date of receipt of record to accompany.

Memo of Appeal of the Appellate Court.

No. 8 dated 26.12.96

Forwarded to the Hon'ble Sessions Judge Jagdalpur

26/4/96

C.H.MAGISTRATE. मुख्य न्यायिक दण्डाधिकारी जगदलपुर

Date of receipt in Appleate Court:

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

# आदेश पत्रक

मामला क्रमांक Cr. App. No. 947/96 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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**DIVISION BENCH:**
**HON'BLE MR. L.C.BHADOO &**
**HON'BLE MR. DHIRENDRA MISHRA, JJ**

**20.2.2006**

Shri Ashok Verma, Advocate for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer for the State.

Oral judgment dictated on *Dais.*

**Per L.C. Bhadoo, J**

This appeal is directed against the judgment of conviction & order of sentence dated 8.4.1996 passed by learned Sessions Judge, Jagdalpur in S.T. No.402/92 whereby learned Sessions Judge after holding the accused/appellant herein guilty for committing murder of his brother Chamru convicted him under Section 302 of the I.P.C. and sentenced him to undergo rigorous imprisonment for life.

The prosecution case, in brief, is that on 10.10.1992 at about 4.00 p.m. deceased Chamru was sleeping in the courtyard of his house, at that time Poyami Sukhram (PW-1) was threshing the paddy in his house. PW-1 Poyami Sukhram saw that accused Lachchu was going towards the house of Chamru carrying axe in his hand and after entering the house, accused assaulted Chamru with the axe on his chest, as a result of which Chamru after raising scream died on the spot. Accused Lachchu threw the axe in

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## आदेश पत्रक

मामला क्रमांक ..... सन् 200

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| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित — 2 — | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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the kitchen garden of the house and ran away towards Dodrapal. Matter was reported by PW-1 Sukhram in Police Station Kodenar on which the Station House Officer registered the F.I.R. (Ex.P-9), left for the scene of occurrence and after giving notice to the Panchas (Ex.P-1) prepared the Panchnama (Ex.P-2) of the body of deceased Chamru. The Investigating Officer took into possession the blood stained soil & plain soil from the place of occurrence under Ex.P-3 and weapon of offence axe under Ex.P-4. Body of deceased Chamru was sent for postmortem examination to Primary Health Centre, Badekilepal, where Dr. Naresh Chand Lange (PW-3) conducted postmortem on the body of deceased and prepared the postmortem report Ex.P-6.

After completion of investigation, charge sheet was filed against accused Lachchu in the Court of learned Additional Chief Judicial Magistrate, Jagdalpur, who in turn committed the case to learned Sessions Judge, Jagdalpur for trial.

The prosecution in order to establish charge against the accused/appellant examined four witnesses. On the other hand, learned Sessions Judge recorded the statement of accused Lachchu under Section 313 of the Cr.P.C. in which he denied the prosecution evidence.

Learned Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused, convicted & sentenced the accused in the manner as mentioned in Para 1 of this judgment.

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| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित —3— | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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We have heard Shri Verma, Advocate for accused/appellant, Mr. Deo, Additional Public Prosecutor with Mr. Bhatia, Panel Lawyer for the State/ respondent.

Homicidal death of deceased Chamru is not in dispute.

As far as involvement of the accused/appellant in committing the crime in question is concerned, PW-1 Poyami Sukhram, who is the eyewitness to the incident, has stated in his evidence that on the fateful day he saw the accused/appellant herein assaulting deceased Chamru with the axe, accused assaulted the deceased on his chest, as a result of which he died instantaneously. He informed Amalsai and thereafter, he, Amalsai & Lakhmu caught the accused by chasing him and brought him back to village. Accused was tied, Patel & Kotwar of the village were informed and thereafter the report (ExP-9) was lodged. Evidence of PW-1 stands corroborated by the evidence of PW-2 Podiyami Hirma & medical evidence of doctor (PW-3). Moreover, the weapon of offence i.e. axe was also recovered from the place of occurrence and therefore, we do not find any circumstance in the cross-examination of these witnesses to disbelieve their evidence. As such, the involvement of the accused/appellant in the crime in question based on the ocular and medical evidence is established.

Learned counsel for the accused/appellant argued that the quarrel was between the brothers and that too at the spur of moment, therefore, the offence does not travel beyond Section 304 Part-1 of the I.P.C.

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| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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On the other hand, learned Panel Lawyer for the State supported the judgment of the trial court.

It is an admitted position that the deceased was the real brother of accused and as has come in the cross-examination of PW-2 Podiyami Hirma that there was some dispute regarding the land between the two brothers, as a result of which the accused/appellant all of a sudden without any pre-meditation on a spur of moment assaulted the deceased with the axe on his chest. In the matter of **Krishna Tiwary and another Vs. State of Bihar** reported in **AIR 2001 SUPREME COURT 2410** the Hon'ble Apex Court has held that relations between two brothers were cordial, prior to incident, but in a sudden quarrel between two brothers without premeditation the accused holding collar of shirt of his brother and his son accused No.2 gave a knife blow, as a result of which accused's brother died and the matter does not travel beyond Section 304 Part 1 of the I.P.C. The facts of the present case are also similar, therefore, the offence against the accused/appellant is made out under Section 304 Part-1.

In the result, the appeal is partly allowed. Conviction and sentence passed under Section 302 of the I.P.C. are set aside and accused Lachchu is acquitted of the charge under Section 302 of the IPC, instead thereof he is convicted under Section 304 Part-I of the I.P.C. and sentenced to undergo R.I. for 10 years.

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| आदेशिका दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित -5- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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| | Accused Lachchu is in custody since 11.10.1992 thereby he has completed more than 13 years in custody, which has not been disputed by learned Additional Public Prosecutor for the State, as such, the accused/ appellant has already served out the sentence, therefore, he be set at liberty forthwith, if not required in connection with any other case.<br>Certified copy as per rules.<br>Sd/-<br>L.C.BHADOO<br>Judge<br>Sd/-<br>DHIRENDRA MISHRA<br>Judge | |

Roshan

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